IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Mohd. Salim & Bandia & Ors.
vs
State of Rajasthan & Anr.

S.B. CRIMINAL REVISION PETITION NO.207/2006 AGAINST THE ORDER DATED 21.2.2006 PASSED BY SHRI OM PRAKASH, RJHS, LEARNED ADDL. SESSIONS JUDGE (FAST TRACK) PARBATSAR, DISTRICT NAGAUR IN SESSIONS CASE NO.28/2005.

DATE OF ORDER : 15th January, 2007

PRESENT
HON'BLE JUSTICE SHRI G.S. SARRAF

Shri Sandeep Mehta, for the petitioners.
Shri S.N. Tiwari, Public Prosecutor.
Shri S.S. Dhillon, for the respondent no.2.

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BY THE COURT:

This revision petition is directed against the order of Addl. Sessions Judge (Fast Track), Parbatsar dated 21.2.2006 whereby he has ordered to frame charges against the petitioners for offences under Sections 147, 148, 323, 325/149, 307/149 and 302/149 IPC.

Heard Shri Sandeep Mehta, learned counsel for the

petitioner, Shri S.N. Tiwari, learned Public Prosecutor and Shri S.S. Dhillon, learned counsel for the respondent no.2.

Shri Sandeep Mehta, learned counsel for the petitioner has submitted that the possession of the mine was with the accused party and the injured party was the aggressor and, therefore, there was no unlawful assembly and as such the petitioners could not be charged for the substantive offence with the aid of Section 149 IPC. He has, therefore, prayed that the petitioners be discharged from the aforesaid charges.

Shri S.N. Tiwari, learned Public Prosecutor and Shri S.S. Dhillon, learned counsel for the respondent no.2 have submitted that it is amply clear from the statements of prosecution witness recorded under Section 161 Cr.P.C. that the petitioners together with the accused Hasamuddin formed an unlawful assembly with the common object of causing injuries to the injured persons and the deceased Ramesh and the deceased Ramesh died on account of the injuries suffered by him, which were sufficient in the ordinary course of nature to cause his death. They have therefore, said that the order of the trial court with respect to framing of charges against the petitioners is in accordance with law.

Briefly stated the facts of the case are that at about 6.00 PM on 21.4.2004, Shahadat @ Khalik lodged a report at Makrana Police Station that they had a joint mine in Makrana bearing

no.59B situated at Ulodi range Kalanada regarding which there was a court order in operation stopping the mining activity. Despite the court order, Gulam Rasool, Kallamudin etc. were carrying on mining activity and when Bismillha, Khurshida, Fayaz and Tahir requested them to stop the mining work, the petitioners alongwith Hasamuddin surrounded them and started to give beating with the common object of causing their death. When Bhanwarlal and Ramesh tried to intervene then they were also assaulted by the petitioners by l*athis, pharsies* and knives. The injured Ramesh subsequently died on account of the injuries received by him. Thus the FIR of the case shows that the petitioners armed with l*athis, pharsies* and knives gave beating to the deceased and the other injured persons.

Section 227 of Cr.P.C. says that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Section 228(1) of Cr.P.C. says that if, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court, he shall frame in writing a charge against the accused. Section 227 of Cr.P.C. itself

contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that the judge shall discharge when he considers that there is not sufficient ground for proceeding against the accused. The ground in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate inquiry in sifting and weighing the material. All that the Court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime. In the facts and circumstances of this case who is in possession of the mine and who is aggressor can be determined only after the witnesses are examined and cross-examined.

If we examine the order of the learned lower court dated 21.2.2006 keeping the above background in mind then the only conclusion is that the learned lower court has not committed any error or illegality. There is no reason to interfere with the said order. This revision petition is without any merit.

In the result, the revision petition stands dismissed.

(G.S. SARRAF), J.

cpgoyal/-